

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

STAR INSURANCE COMPANY,

Plaintiff,

v.

SKANSKA USA BUILDING INC.,

Defendant.

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Civil Action No.

5:13-cv-00640-OLG

**JOINT MOTION TO VACATE REPORTS AND RECOMMENDATIONS**

TO THE HONORABLE JUDGE OF SAID COURT:

Star Insurance Company (“Star”) and Skanska USA Building Inc. (“Skanska”) have reached a settlement in this case. As part of the settlement, Star and Skanska have agreed to request that the Court vacate its rulings on their motions for summary judgment and, if applicable, remove any designation of those documents for publication. In accordance with that agreement, Star and Skanska hereby move the Court to vacate its summary judgment rulings (ECF Nos. 73, 89, 98, and 100) and de-designate those documents for publication.

The Court’s analysis of the parties’ summary judgment motions focused on interpretation of the surety bond at issue in this case. (*See* ECF Nos. 73.) The Court’s rulings are interlocutory, are subject to withdrawal by the Court at any time, and have no res judicata effect. *FDIC v. Massingill*, 24 F.3d 768, 774 (5th Cir. 1994), *supplemented*, 30 F.3d 601 (5th Cir. 1994). These documents have not been published and have limited, if any, precedential value. Further, because these rulings are not judgments, the limitations on vacatur of judgments in furtherance of settlement do not apply. *See U.S. Bancorp Mortg. Co. v. Bonner Mall Pshp.*, 513 U.S. 18, 21-26 (1994) (discussing propriety of vacating lower court judgment); *Izumi Seimitsu Kogyo Kabushiki*

*Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 40 (1993) (Stevens, J., dissenting) (discussing public interest in preserving judicial precedents).

For these reasons, the parties respectfully request that the Court vacate, and de-designate for publication, the following relating to the parties' competing motions for partial summary judgment (ECF Nos. 36 and 37):

1. Report and Recommendation of United States Magistrate Judge (ECF No. 73) (Dec. 2, 2015);
2. Order Adopting Report and Recommendation (ECF No. 89) (March 4, 2016);
3. Supplemental Report and Recommendation of United States Magistrate Judge (ECF No. 98) (April 28, 2016); and
4. Order Adopting Supplemental Report and Recommendation (ECF No. 100) (May 17, 2016).

Respectfully submitted,

/s/ Jadd F. Masso

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